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STATEMENT BY

THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

ON

THE PERMANENT AUTHORIZATION OF THE ALTERNATIVE

WORK SCHEDULES PROGRAMS

APRIL 24, 1985

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to present the views of the National Federation of Federal Employees on the permanent authorization of the Alternative Work Schedules (AWS) program. Since it was first implemented six years ago, the program has resulted in tangible benefits for employees, managers and the public alike. In fact, it has been especially popular with our membership which has endorsed the program at each biennial convention since 1976. But, despite its widespread popularity, the program will be terminated on July 24th of this year unless it is reauthorized. If Congress fails to act quickly on the necessary extension, the Federal government will lose an invaluable productivity and morale-boosting tool. I therefore commend the Chairman for introducing legislation to permanently extend flexible work schedules, and I look forward to working closely with the Subcommittee to expedite its consideration.

Flexible work schedules are neither new nor revolutionary management concepts. Instead they have become common practice for many private sector firms who must meet the demands of a changing workforce. Over the last few decades, an increasing number of women have entered the workplace on a full or part-time basis-- primarily for economic reasons. And as a consequence, both men and women have found it necessary to alter their lifestyles. Couples and single parents now need greater flexibility to meet job, home and child care responsibilities. So it is hardly suprising that employees are placing more emphasis on their ability to control their work hours. To meet these considerations, employers are providing flexible work schedules.

Two basic forms of work schedules have been developed to cater to individual employee needs. The most commonly used is the "flexible" work schedule which is based around a "core" time (hours of the day in which workers are required to be present) and "flexible" time (hours which can be altered within a given time frame). For example, employees may select their hour of arrival and departure within the "flexible" time band as long as they are present at work during the core of business hours. An employee, however, may not depart from the eight hour a day, forty hour a week work schedule.

Any deviations in the basic forty hour workweek are provided for in a compressed workweek program. Instead of requiring employees to adhere to the traditional work schedule, employers may allow an individual to work a greater number of hours per day so that a day without work may be taken. An employee could choose a ten hour workday, four days a week or a 5-4/9 schedule. And finally, some companies have allowed their employees to vary arrival and departure times in addition to compressed work schedules through "maxiflex" programs

What began as an experiment for private sector firms over a decade ago has become an extremely popular and widely used program today--partly because alternative work schedules are one of the rare programs that benefit all parties involved. According to a 1981 report published in the January/February edition of Public Administration Review, "Flexible work hours are now widely regarded as an

innovation of proven, universal worth in personnel management....A sizable body of literature argues that "flextime" produces improvements in morale, interpersonal relations, productivity absenteeism and turnover." Recognizing the multitude of benefits which can accrue to employees through flexible work schedules NFFE long ago sought these schedules through the collective bargaining process. Since the former Federal Labor Relations Council had found such schedules to be negotiable (Marshall Engineers and Scientists Association, FLRC No. 76A-81, 1977) we negotiated flexible work hours whenever possible.

We were unable, however, to pursue compressed workweek schedules for our members because specific Title 5 and Fair Labor Standards Act (FLSA) provisions dealing with overtime, premium pay and hours of work prevented experimentation. It was only after extensive lobbying by employee organizations that Congress recognized the need to extend such work schedules to the Federal labor force. In 1978 the Federal Employees Flexible and Compressed Work Schedules Act (Public Law 95-390) was enacted authorizing a three-year experimental program to test flextime and compressed workweek schedules in the Federal workforce. At the time, Congress intended the program to continue if it was found to be successful. Section 2 of the law stated:

> "The Congress finds that new trends in the usage of four-day workweeks, flexible work hours and other variations in workday and workweek schedules in the

> private sector appear to show sufficient promise to warrant carefully designed, controlled and evaluated experimentation by Federal agencies over a three-year period to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a PERMANENT BASIS" (Emphasis added).

I have emphasized the words "permanent basis" because I feel that Congress undoubtedly intended to permanently authorize AWS programs pending their successful evaluation.

It is just such an evaluation these programs have received from managers and employees alike. The Federal Managers Association has praised the flexibility provided by these schedules and, along with the Office of Personnel Management (OPM), has called for their permanent authorization. Our members have also been extremely pleased with the flexible work schedule program for a host of reasons. Foremost has been an increased enthusiasm for their jobs that has contributed significantly to their morale. The ripple effect can be seen in reduced tardiness and less use of sick leave and annual leave--all of which contribute to productivity. At this time, I would like to give the Subcommittee examples of specific benefits which have accrued to our members.

NFFE represents field employees of the Forest Service at Mount Baker-Snoqualmie National Forest in Northwest Washington. Our members have told us that while on the compressed workweek (10 hours a day/4 days per week) they have found that they can

accomplish more work than a regular work schedule permitted. Because these field employees work in remote areas, they must spend about one and a half hours just to reach their worksite. On an eight-hour/day schedule, our members lost three hours in commuting time and had only five continuous hours of work. However, on the ten-hour/day schedule, they can complete a full workday of seven hours. Not only do employees accomplish more work, but agencies also save energy costs because fewer trips are made to the worksite.

NFFE members at the Willamette National Forest in Oregon have also reported significant benefits from the AWS program, particularly in terms of child care. Employees can now hire a child sitter four days a week instead of five days which has reduced child care costs for many workers. We have also heard from parents who have been able to arrange work hours to give them more time with their children. In summary, the AWS experiment has given both employees and management a greater degree of flexibility and control that has been rewarding to all parties concerned. If the program is not authorized, employee morale and productivity will surely decline.

When the original AWS experiment expired in 1982, agencies and employees both testified to its effectiveness and success. But in spite of the experiment's popularity, the Office of Personnel Management refused to support its extension without substantial

changes. In fact, the OPM's dilatory tactics almost destroyed the entire program. And, it appears that the agency is once again trying to complicate the reauthorization process by calling attention to alleged problems in the program which simply do not exist.

I am referring to Dr. Devine's statement before the Subcommittee on March 28th in which he raised the issue of "inequitable" holiday compensation. The Director testified that employees on a compressed work schedule receive a windfall on holidays because they are paid for a ten hour day while workers on a regular work schedule are paid for an eight hour day. Dr. Devine suggested that employees participating in the AWS program should therefore be compensated only for an eight hour day or make up the lost salary by working on another day.

Dr. Devine has obviously missed or ignored the purpose of Alternative Work Schedules. The program was initiated to give employees greater control over work hours for the benefit of both employees and the government. It was not intended to penalize workers for the added flexibility. However, this is exactly what the Director is proposing to do. His remedy to a nonexistent problem will therefore only drive workers out of a program which has resulted in increased productivity and cost savings for the Federal government. We can only conclude, then, that the OPM's concerns are a thinly-veiled attempt to further restrict employee benefits. What the personnel agency has failed to recognize is that the government and taxpayers will also be losers.

Finally, I do not believe that it was Congress' intent to dock a worker's pay for participation in a compressed workweek program. And the OPM's final regulations on the administration of the AWS program appear to acknowledge this. The rules published in the September 27, 1983 edition of the Federal Register (Vol. 48, No. 188) state;

> "Two agencies commented that employees on compressed work schedules should be limited to eight hours off on a holiday. The language of 5 U.S.C. 6128(d) governing premium pay for holidays is identical to the language in § 203 of Pub. L. 95-390. During the AWS Experimental Program, OPM has interpreted this section of the law to provide that employees were entitled to receive "pay for the number of hours of the compressed work schedule on the holiday. e.g. on a 4-10 schedule employees receive 10 hours of base pay on a holiday."

The OPM regulation summary also noted that a Comptroller General decision (B-196653, December 31, 1979) had concurred with OPM's interpretation of the law. It is apparent, therefore, that employees on a compressed work schedule are to receive full compensation based upon their regular workday should it coincide with a holiday.

The past six years have shown us how rewarding flexible work schedules can be. Indeed, if these programs were discontinued, our members would be devastated, and I believe that employee morale and productivity throughout the entire government would suffer. Yet, while the AWS program has been tremendously successful to date, our members remain concerned about the possible

complications arising from a negotiation impasse on the implementation of a compressed work schedule. As a result of language in the Federal Employees Flexible and Compressed Work Schedules Act of 1982 (Public Law 97-221), there is a threat that some disputes concerning Alternative Work Schedules may never be resolved.

Section 7119 of the Civil Service Reform Act empowered the Federal Service Impasse Panel (FSIP) to assist parties in resolving negotiation impasses. The law provides that the Panel may recommend procedures to the parties to resolve an impasse, but if the parties cannot reach agreement on their own, the Panel may take "whatever action is necessary and not inconsistent with this chapter to resolve the impasse." (5 U.S.C. 7119 (c)(5)(B)(iii)) There are no standards or guidelines imposed by the statute for the Panel to use in exercising its authority. In fact, its unpredictable nature is considered by the Panel to be one of its greatest assets.

Public Law 97-221 put a new wrinkle into the system. The Act allows parties to negotiate over the establishment or continuation of flexible or compressed work schedules. If the parties cannot agree, the FSIP is empowered to resolve the impasse on an expedited basis. However, Congress did not give the Panel a free rein in settling such disputes. Section 6131 (c)(2)(A) of the Act states "The Panel...shall take final action in favor of the agency's determination if the finding in which it is based is supported by

evidence that the schedule is likely to cause an adverse agency impact." But the law is silent on what the Panel must do if it finds the agency has not provided "evidence that the schedule is likely to cause an adverse agency impact." Based on our experience with the Panel and its actions, we would expect it to award for the union in such cases.

However, the legislative history on this section creates some confusion. The section-by-section analysis included in the Senate Report (No. 97-365) states:

> "If the Panel finds that there is not sufficient evidence to support a conclusion that an adverse impact will occur, it is expected the Panel will direct the parties to fully negotiate out the particular schedule and not to simply impose it on the agency."

This is a serious departure from the Panel's past actions. The report in essence states that if management is unable to meet the statutory test, the parties must return to the table. Therefore, there is no guarantee that the impasse will be resolved in a timely fashion.

The following scenarios demonstrate our concern about complications which could arise. In the first case, a NFFE local and an agency are negotiating over implementation of a compressed workweek schedule. A mediator from the Federal Mediation and Conciliation Service is called in, but the parties still cannot reach an

agreement so the assistance of the Panel is requested. The Panel determines that the agency has not provided evidence of a likely adverse agency impact and thus orders the parties back to the bargaining table. Management continues to refuse to agree to implement a compressed workweek and the local is helpless in trying to settle the negotiation. In the second scenario, the Panel awards for the union and directs the parties to implement a compressed schedule. However, the agency refuses saying that the Panel has no authority to award for the union so the local files an unfair labor practice charge. Even if the Federal Labor Relations Authority finds for the union and orders the agency to implement the Panel's award, the agency might still refuse. The local would then file another ULP charge asking the FLRA to go to court to get its order enforced. Meanwhile, several years could have passed without the implementation of a compressed workweek. These situations could be prevented, however, if the Subcommittee adopted the following proposed report language reaffirming the statutory authority already vested in the FSIP.

> "The Committee directs the Panel in the future to take final action in favor of the Union's proposal for a flexible or compressed schedule in those cases where the evidence does not demonstrate that the schedule is likely to cause an adverse agency impact."

Finally, I would like to once more commend the Chairman and Subcommittee members for pursuing the permanent authorization of the Alternate Work Schedules Program.

That concludes my statement. I would be happy to answer any questions you may have. Thank you.